

R E M A R K S

By the above-captioned office action, claims 1-7 were rejected under the judicially created doctrine of obviousness-type double patenting over the claims of United States patent No. 5, 867, 580, and it was indicated that a timely filed terminal disclaimer may be used to overcome the obviousness-type double patenting rejection. By the instant amendment, the applicant believes for the reasons that appear below the filing of such a terminal disclaimer is premature:

An Information Disclosure Statement is enclosed herewith. Said United States patent No. 5, 867, 580 has been the subject of a re-examination proceeding, control No. 90/005,591. The patents to Smith and Goldfarb, and the Sharper Image advertisement sheet, listed on the IDS, are from the re-examination proceeding. It is noted that the Sharper Image advertisement sheet is for the same product as the Smith patent. A re-examination certificate for said United States patent No. 5, 867, 580 is expected to issue shortly and it is respectfully submitted that the question of a terminal disclaimer be deferred until the certificate in re-examination has been issued.

The application that is parent to the above-captioned invention is the subject of PCT application PCT/US97/16658. The Inoue *et al.* and the Ishiguro *et al.* patents listed on the IDS are from the PCT application. A copy of the International Search Report and Written Opinion therefrom are enclosed. The PCT publication WO 98/09373, corresponding to the parent of the above-captioned invention, is also listed on the accompanying Information Disclosure Statement.

The Digital Sound Soother XS, Marsona 1250, Marsona 1280, and Bookman references, and the Sigara *et al.*, Loudermilk and Grewe *et al.* patents, listed on the Information Disclosure

Statement, were cited in the parent application serial number 08/706, 134, referred to in the Cross-reference to Related Applications section, of the above-captioned invention.

The remaining references listed on the Information Disclosure Statement were cited in the application 08/706, 136, also referred to in the Cross-reference to Related Applications section of the above-captioned application.

The applicant believes the inventive subject matter of the claims 1-7 is readily patentably distinguishable over the listed references taken alone or in any reasonable combination.

Reconsideration, re-examination and early allowance of claims 1-7 are accordingly respectfully requested. The applicant would be willing to file a terminal disclaimer over the certificate in re-examination if that is believed in order. The examiner is cordially invited to telephone the undersigned representative if that may help in the prosecution of the instant invention.

Respectfully submitted,

Troy Anderson *et al.*

By:

Albert Peter Durigon
Reg. No. 30,046
Attorney for Applicants

Law Office of A. P. Durigon
20 Eustis Street
Cambridge, MA 02140
617-354-7330 (Telephone)
617-497-0229 (Telecopier)
apdurigon@attbi.com (E-ma